Supreme Court, U.S.
FILED
OCT 28 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-424

In The
Supreme Court of the United States
October Term, 1987

WILLIAM C. GAINEY,

Petitioner,

vs.

GILMAN PAPER COMPANY and
UNITED PAPERWORKERS INTERNATIONAL
UNION,

Respondents.

BRIEF OF RESPONDENT GILMAN PAPER COMPANY IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

GUY O. FARMER II
MARLENE HAMMOCK
KIMBERLY A. SELMORE
SMITH & HULSEY
1800 Florida National Bank Tower
Post Office Box 53315
Jacksonville, FL 32201-3315
904/359-7700

Counsel for Respondent
Gilman Paper Company

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

QUESTION PRESENTED

Whether the United States Court of Appeals for the Eleventh Circuit properly affirmed the District Court's dismissal of the complaint in this action as preempted by Section 301 of the Labor-Management Relations Act and time barred by the six-month statute of limitations of 29 U.S.C. § 160(b) (1982).

STATEMENT OF CORPORATE AFFILIATION

Respondent Gilman Paper Company is a New Hampshire Corporation. It is a wholly owned subsidiary of Gilman Investment Company and owns the following subsidiaries:

St. Marys Railroad Company

Deerefield Timber Investors Inc.

Gilman International Inc.—Disc.

Gilman Paper (Overseas)—V.I.—SSC

St. Marys Timber Company

Gilman Paper Company—Kentucky

Gilman Paper Company—Oklahoma

Gilman Paper Company—Pennsylvania

Gilman Paper Company—Indiana

CG Paper Corp.

Gilman Falcon Jet Inc.

Gilman Investment Company is a Florida Corporation and in addition to Gilman Paper Company owns the following subsidiaries:

Gilman Timberlands and Land Development Company

Gilman Industrial Building Company GIC Inc.

White Oak Press Inc.

Wild Oak Plantation Inc.

TABLE OF CONTENTS

	Pages
QUESTION PRESENTED	i
STATEMENT OF CORPORATE AFFILIATION	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI	1
OPINIONS BELOW	2
JURISDICTION	2
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR DENYING THE WRIT	5
I. The Petitioner's Cause of Action for Wrongful Termination of Insurance Benefits is Preempted by Section 301 of the Labor-Management Relations Act	6
II. The Petitioner's Cause of Action for Misrepresentation is Also Preempted By Section 301 of the Labor-Management Relations Act	8
III. The Petitioner's Causes of Action for Wrongful Termination of Insurance Benefits and Misrepresentation Are Time Barred By the Statute of Limitations Applicable to Actions Under Section 301	11
CONCLUSION	12
APPENDIX:	
Order of the United States District Court for the Southern District of Georgia (Case No. CV 286-63)	A1
Judgment of the United States Court of Appeals for the Eleventh Circuit (Case No. 86-8602)	A6

TABLE OF AUTHORITIES

Pages

CASES

Allis-Chalmers v. Lueck, 471 U.S. 202, 105 S.Ct. 1904, 85 L.Ed.2d 206 (1985) 7, 8, 10

Avco v. Aero Lodge No. 735, International Association of Machinists and Aerospace Workers, 390 U.S. 557, 88 S.Ct. 1235, 20 L.Ed.2d 126 (1968) 6, 7

Bale v. General Telephone Co. of California, 795 F.2d 775 (9th Cir. 1986) 8

Bell v. Gas Service Co., 778 F.2d 512 (8th Cir. 1985) 8

Benson v. General Motors Corporation, 716 F.2d 862 (11th Cir. 1983) 11

DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151, 103 S.Ct. 2281, 76 L.Ed.2d 476 (1983) 11

Eitmann v. New Orleans Public Service, Inc., 730 F.2d 359 (5th Cir. 1984), *cert. denied*, 105 S.Ct. 433 (1984) 9

Franchise Tax Board v. Construction Laborers Vac. Trust, 463 U.S. 1, 103 S.Ct. 2841, 77 L.Ed. 2d 420 (1983) 8

Hill v. Georgia Power Co., 786 F.2d 1071 (11th Cir. 1986) 11

Hillard v. Dobelman, 774 F.2d 886 (8th Cir. 1985) 8

International Brotherhood of Electrical Workers, et al. v. Hechler, 55 U.S.L.W. 4694, 107 S.Ct. 2161, 95 L.Ed.2d 791 (1987) 9, 10

Mitchell v. Pepsi-Cola Bottlers, Inc., 772 F.2d 342 (7th Cir. 1985), *cert. denied* 106 S.Ct. 1266 (1986) 8, 9

TABLE OF AUTHORITIES—Continued

Pages

Moore v. General Motors Corporation, 739 F.2d 311 (8th Cir. 1984), *cert. denied*, 105 S.Ct. 2320 (1985) 9

Painting and Decorating Contractors Association v. Painters and Decorating Joint Committee, 707 F.2d 1067 (9th Cir. 1983), *cert. denied*, 466 U.S. 927 (1984) 6

Simon v. Kroger Co., 743 F.2d 1544 (11th Cir. 1984) 11

Smith v. Evening News Association, 371 U.S. 195, 83 S.Ct. 267, 9 L.Ed.2d 246 (1962) 6

Textile Workers Union v. Lincoln Mills of Ala., 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972 (1957) 6

Truex v. Garrett Freightlines, Inc., 784 F.2d 1347 (9th Cir. 1985) 8

STATUTES

Labor-Management Relations Act, Section 301, 29 U.S.C. § 185(a) ..... *passim*

National Labor Relations Act, Section 10(b), 29 U.S.C. § 160(b) ..... *passim*

28 U.S.C. § 1254(1) 2

29 U.S.C. § 1441 5

Fed. R. Civ. P. 11 5

No. 87-424

In The
Supreme Court of the United States
October Term, 1987

WILLIAM C. GAINEY,

Petitioner,

vs.

GILMAN PAPER COMPANY and
UNITED PAPERWORKERS INTERNATIONAL
UNION,

Respondents.

BRIEF OF RESPONDENT GILMAN PAPER COMPANY IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

The Respondent Gilman Paper Company respectfully prays that the Petition for a Writ of Certiorari filed by the Petitioner on August 12, 1987, in the above captioned matter, to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit entered in the above captioned matter, bearing Case No. 86-8602, on May 14, 1987, be denied.

OPINIONS BELOW

The Judgment of the United States Court of Appeals for the Eleventh Circuit in Case No. 86-8602 is not reported and is reproduced in the Respondent's Appendix at A6. The Opinion of the United States District Court for the Southern District of Georgia, Brunswick Division in Case No. CV286-63 likewise is not reported and is set forth in Respondent's Appendix at A1.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Labor-Management Relations Act of 1947 Section 301(a), 29 U.S.C. Section 185(a):

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

National Labor Relations Act Section 10(b), 29 U.S.C. Section 160(b):

> Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Court for such purposes, shall have power to issue and cause to be served upon such person a complaint

stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the service of said complaint: Provided, that no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge . . . .

———o———

STATEMENT OF THE CASE

Petitioner William C. Gainey[1] was employed by Respondent Gilman Paper Company[2] from April, 1964, until December 23, 1983. During that time, Gainey was represented in his employment by Respondent United Paperworkers International Union.[3] The terms and conditions of Gainey's employment were governed by a collective bargaining agreement between the Company and the Union.[4] When Gainey left the Company on December 23, 1983, he received disability insurance benefits until April 24, 1984, when such benefits were terminated pursuant to the terms of the Labor Agreement.

---

1 Petitioner William C. Gainey is hereafter referred to as Gainey.

2 Respondent Gilman Paper Company is hereafter referred to as the Company.

3 Respondent United Paperworkers International Union is hereafter referred to as the Union.

4 The collective bargaining agreement in force between the Company and the Union on December 23, 1983, when Gainey left the Company is hereafter referred to as the Labor Agreement.

On March 11, 1986, Gainey initiated this action in the Superior Court of Camden County, Georgia, by filing a complaint alleging that the Company violated the Labor Agreement by terminating his insurance benefits. Gainey also alleged that the Union violated its duty of fair representation by inadequately explaining the Labor Agreement's insurance provisions to him and to other members of the Union prior to their vote to ratify it in 1983. In addition, the complaint alleged that the Company and the Union conspired to deny Gainey insurance benefits under the Labor Agreement.

This action was removed by the Company, without opposition, to the United States District Court for the Southern District of Georgia, Brunswick Division. Following removal both the Company and the Union filed motions to dismiss the Complaint on the ground that it was time-barred under the applicable federal statute of limitations. On July 7, 1986, the Honorable Anthony A. Alaimo, Chief Judge, United States District Court, Southern District of Georgia, Brunswick Division, granted these motions and dismissed the complaint with prejudice. In so doing the District Court characterized Gainey's claims by stating that:

> Count I is a claim against Gilman for wrongfully terminating Gainey's insurance coverage. Count II is a claim against the Union for deliberately failing to disclose the limitation on the insurance coverage provided for in the collective bargaining agreement prior to ratification of that agreement. Count III is a conspiracy claim against both defendants.

The District Court then analyzed each of Gainey's claims and held that all were time barred by the six-month

statute of limitations of 29 U.S.C. § 160(b) (1982), or preempted by the Labor-Management Relations Act. In addition, the District Court ordered Gainey's counsel to show cause why sanctions should not be imposed against him under Rule 11 of the Federal Rules of Civil Procedure. In so ruling, the District Court stated that if Gainey's counsel had made a reasonable inquiry into the law, "he would have known that dismissal of this action was inevitable".

Gainey appealed to the United States Court of Appeals for the Eleventh Circuit. On May 14, 1987, that Court affirmed *per curiam* the District Court's Judgment. On June 23, 1987, the District Court imposed Rule 11 sanctions against Gainey's counsel and ordered him to pay the Company its reasonable costs, expenses and attorneys' fees incurred in defending the action.

———o———

REASONS FOR DENYING THE WRIT

The decision of the Eleventh Circuit affirming the District Court's dismissal of this action as preempted by Section 301 of the Labor-Management Relations Act and time barred by the six-month statute of limitations of 29 U.S.C. § 160(b) is not in conflict with any decision of this Court or of the various courts of appeal. The resolution of Gainey's claims is clearly dependent on an interpretation of the Labor Agreement. As a result, this action is preempted by Section 301 and consequently time barred by the six-month statute of limitations applicable to such actions.

I. The Petitioner's Cause of Action for Wrongful Termination of Insurance Benefits is Preempted by Section 301 of the Labor-Management Relations Act

Section 301 of the Labor-Management Relations Act provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any district court of the United States having jurisdiction of the parties without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a).

An action within the scope of Section 301 is governed by federal substantive laws, *Textile Workers Union v. Lincoln Mills of Ala.*, 353 U.S. 448, 456-57, 77 S.Ct. 912, 1 L.Ed. 972 (1957), and is subject to removal to federal court under 28 U.S.C. § 1441. *Avco Corp. v. Aero Lodge No. 735, International Association of Machinists and Aerospace Workers*, 390 U.S. 557, 560-62, 83 S.Ct. 267, 20 L.Ed. 126 (1968). Section 301 is to be given a broad interpretation. *Smith v. Evening News Association*, 371 U.S. 195, 199, 83 S.Ct. 267, 9 L.Ed.2d 246 (1962).

In *Painting and Decorating Contractors Association v. Painters and Decorating Joint Committee*, 707 F.2d 1067 (9th Cir. 1983), *cert. denied*, 466 U.S. 927 (1984), the court described the scope of Section 301:

> All that is required for jurisdiction to be proper under § 301(a) is that the suit be based on an alleged breach of contract between an employer and a labor organization and that the resolution of the lawsuit be focused upon and governed by the terms of the contract.

Id. at 1061.

It is obvious that a determination of whether the Company acted wrongfully in terminating Gainey's benefits under the Labor Agreement depends upon an interpretation of that agreement and is thus covered by Section 301. This issue was directly addressed by this Court in *Allis-Chalmers v. Lueck*, 471 U.S. 202, 85 L.Ed.2d 206, 105 S.Ct. 1904 (1985). In *Allis-Chalmers*, the plaintiff was an employee whose terms and conditions of employment were covered by a collective bargaining agreement. The agreement provided for a group health and disability plan and a grievance and arbitration procedure. Lueck suffered an injury that was covered by the employer's group health and disability plan. According to Lueck, however, the employer periodically would order the insurer to cut off his payments. Lueck filed suit against the employer and the insurer in state court alleging the state tort of bad faith in the defendants' failure to make disability payments under the negotiated disability plan.

This Court held, unanimously, that the action was preempted by Section 301 because Lueck's right to disability insurance arose from the collective bargaining agreement and, therefore, the manner in which the employer performed its obligation was governed by that agreement, and stated that:

> [W]hen resolution of a state-law claim is substantially dependent upon the analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a § 301 claim, *see Avco Corp. v. Aero Lodge 735*, 390 U.S. 557 (1968), or dismissed as preempted by federal labor-contract law.

105 S.Ct. at 4467. See also *Franchise Tax Board v. Construction Laborers Vac. Trust*, 463 U.S. 1, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983); *Truex v. Garrett Freightlines*, 784 F.2d 1347 (9th Cir. 1985); *Bell v. Gas Service Co.*, 778 F.2d 512 (8th Cir. 1985); *Hillard v. Dobelman*, 774 F.2d 886 (8th Cir. 1985); *Mitchell v. Pepsi-Cola Bottlers, Inc.*, 772 F.2d 342 (7th Cir. 1985), *cert. denied*, 106 S.Ct. 1266.

The reasoning of the Court in *Allis Chalmers* is clearly applicable to the present case in which Gainey claimed that the Company terminated his benefits in violation of the Labor Agreement. Accordingly, the Eleventh Circuit correctly affirmed the District Court's Judgment with regard to this issue.

II. The Petitioner's Cause of Action for Misrepresentation is Also Preempted By Section 301 of the Labor-Management Relations Act

In Counts II and III of his complaint, Gainey contended that the Union and the Company misled him and other union members about the extent of the insurance coverage provided to them in the Labor Agreement prior to their vote to ratify that agreement. In order to prove this claim of misrepresentation, Gainey clearly must show a false statement of fact and therefore the representations made to him must be compared with the actual terms of the Labor Agreement.[1] Thus resolution of this claim, like the wrongful termination of benefits claim, is dependent upon an analysis of the Labor Agreement. Consequently, the Eleventh Circuit Court of Appeals properly affirmed the District Court's dismissal of the complaint as preempted by Section 301 in accordance with *Allis-Chalmers*, supra. See also *Bale v. General Telephone Company of*

California, 795 F.2d 775 (9th Cir. 1986); *Mitchell v. Pepsi-Cola Bottlers, Inc.*, 772 F.2d 342 (7th Cir. 1985); *Eitmann v. New Orleans Public Service, Inc.*, 730 F.2d 359 (5th Cir. 1984), *cert. denied*, 105 S.Ct. 433 (1984); *Moore v. General Motors Corp.*, 739 F.2d 311 (8th Cir. 1984), *cert. denied*, 105 S.Ct. 2320 (1985).

Finally, the Company would point out that the Eleventh Circuit's decision in this case is not in conflict with the decision of this Court in *International Brotherhood of Electrical Workers v. Hechler*, — U.S. —, 107 S.Ct. 2161, 95 L.Ed.2d 791 (1987). In *Hechler*, the plaintiff was an employee whose terms and conditions of employment were governed by a collective bargaining agreement. Hechler was assigned to a new job which she alleged was beyond the scope of her training and experience. After beginning her new assignment, Hechler was injured on the job. Two years later, Hechler filed suit against the union in state court alleging that "pursuant to contracts and agreements entered into by and between" the union and her employer and "pursuant to the relationship by and between" the union and Hechler, the union had a duty to ensure that Hechler was provided a safe work place. 107 S.Ct. at 2164.

The union removed the action to the United States District Court for the Southern District of Florida on the grounds that the alleged duty to Hechler arose solely from the collective bargaining agreement and, therefore, was covered by Section 301. The union then moved to dismiss the complaint as untimely. The District Court granted the union's motion reasoning that the duty allegedly owed to Hechler arose from the collective bargaining agreement

and, therefore, was governed by Section 301. Thus, the District Court concluded that the action was time-barred under the six-month statute of limitations applicable to such actions and dismissed the action. 107 S.Ct. at 2164.

On appeal, the Eleventh Circuit reversed, concluding that although the collective bargaining agreement defined the scope of the union's duty to Hechler, the union's liability would ultimately turn on state tort law principles. Consequently, the Eleventh Circuit held that Section 301 did not preempt Hechler's claim and remanded the case to state court for adjudication on the merits. 107 S.Ct. at 2164.

After granting certiorari, this Court held that Hechler's action was preempted by Section 301 because to determine the union's duty to Hechler, it would have to be determined whether the collective bargaining agreement placed an implied duty of care on the union to ensure that Hechler was provided a safe work place. This Court then stated:

> [I]n this case, as in *Allis-Chalmers*, it is clear that 'questions of contract interpretations . . . underlie any finding of tort liability'. The need for federal uniformity in the interpretation of contracts terms therefore mandate that here, as in *Allis-Chalmers*, respondent is precluded from evading the pre-emptive force of § 301 by casting her claim as a state-law tort action.

107 S.Ct. at 2168. (citations omitted).

The Eleventh Circuit's decision in the present case in which Gainey alleges that the Union misled him regarding the disability insurance benefits provided under the Labor Agreement is clearly consistent with this Court's reasoning in *Hechler*. In this case, as in *Hechler*, the resolution of Gainey's claim against the Union would inevitably in-

volve interpretation of the Labor Agreement. As a result, the Eleventh Circuit correctly held that Section 301 covers Gainey's claim and that decision need not be reviewed by this Court.

III. The Petitioner's Causes of Action for Wrongful Termination of Insurance Benefits and Misrepresentation Are Time Barred By the Statute of Limitations Applicable to Actions Under Section 301.

In *Del Costello v. International Brotherhood of Teamsters*, 462 U.S. 151, 103 S.Ct. 2281, 76 L.Ed.2d 476 (1983), this Court held that the six-month statute of limitations of 29 U.S.C. § 160(b) (1982) applied to actions under Section 301. In this case Gainey alleges that he first determined that the benefits that he had been receiving were terminated on April 21, 1984. However, Gainey did not initiate this action until March, 1986, almost two years after his benefits were terminated. Consequently, since this Action is covered by Section 301 it is clearly barred by the six-month statute of limitations applicable to such actions. *Hill v. Georgia Power Co.*, 786 F.2d 1071 (11th Cir. 1986); *Simon v. Kroger Co.*, 743 F.2d 1544 (11th Cir. 1984); *Benson v. General Motors Corporation*, 716 F.2d 862 (11th Cir. 1983). Thus the Eleventh Circuit correctly affirmed the District Court's Judgment on this issue as well.

———o———

CONCLUSION

For all of the foregoing reasons the Petition for A Writ of Certiorari should be denied.

Respectfully submitted,

GUY O. FARMER II
MARLENE HAMMOCK
KIMBERLY A. SELMORE
SMITH & HULSEY
1800 Florida National Bank Tower
Post Office Box 53315
Jacksonville, FL 32201-3315
904/359-7700
Counsel for Respondent
Gilman Paper Company

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

WILLIAM C. GAINEY, Plaintiff	)	CIVIL ACTION
V.	)	
GILMAN PAPER COMPANY and UNITED PAPERWORKERS INTERNATIONAL UNION, Defendants	)	No. 286-063

ORDER

(Filed July 7, 1986)

This action arises out of the termination by defendant Gilman Paper Company ("Gilman") of the insurance coverage of plaintiff, William Gainey, a disabled former employee. In addition to Gilman, Gainey has named the United Paperworkers International Union ("Union") as a defendant.

Gilman terminated Gainey's coverage effective April 24, 1984, and Gainey learned of the termination shortly afterward. Complaint at ¶6. Gainey filed this action on March 11, 1986, almost two years after the termination of his benefits. Although Gainey alleges that the Union ignored all requests by him and his attorney for assistance, he does not allege that the Union led him to believe that it was taking, or would take, any action on his behalf. *Id.* at Count II.

Presently before the Court are the motions of the defendants to dismiss the complaint as time-barred. The

Union seeks to dismiss the complaint on the additional ground of failure to exhaust contractual remedies. Gilman seeks to be awarded its costs, including attorney fees, in defending the action.

The complaint is in three counts. Count I is a claim against Gilman for wrongfully terminating Gainey's insurance coverage. Count II is a claim against the Union for deliberately failing to disclose the limitations on the insurance coverage provided for in the collective-bargaining agreement prior to ratification of the agreement. Count III is a conspiracy claim against both defendants.

Defendants characterize this action as a hybrid § 301/unfair-representation action. They argue that the complaint is clearly barred on its face under the six-month statute of limitation of 29 U.S.C. § 160(b) (1982), which was held to apply to such actions by the United States Supreme Court in *Del Costello v. International Brotherhood of Teamsters*, 462 U.S. 151, 103 S.Ct. 2281, 76 L.Ed. 2d 476 (1983). Gainey, however, maintains that the action is not a hybrid § 301/unfair-representation claim.

First, Gainey attempts to distinguish factually his claim against Gilman from the claims against the employers of *Del Costello*. Despite those differences, Gainey's claim for wrongful termination of insurance coverage revolves around contract interpretation. As such, the claim is either an action under § 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 141 *et seq.* (1982), or it is preempted. *Allis-Chalmers Corp. v. Lueck*, 105 S.Ct. 1904, 85 L.Ed.2d 206, 219-20 (1985).

Gainey also takes the position that his claim against the Union is not a breach of the duty of fair representa-

tion claim, because the claim is not based on the Union's failure to file a claim on his behalf. Rather, Gilman states that the claim against the Union is based on the Union's failure to "reveal the full context and limitations of the insurance coverage under the collective-bargaining agreement prior to ratification of the agreement. Brief in Opposition, at 3.

Gainey apparently believes that the duty of fair representation applies only to a union's action, or inaction, in processing grievances. The duty, however, also applies to a union's negotiation and administration of the collective-bargaining agreement. *Anderson v. United Paperworkers International Union*, 641 F.2d 574, 577-78 (8th Cir. 1981) (union representative's knowing misrepresentation concerning special security fund for severance pay, made to employees to induce ratification of collective-bargaining agreement, violated duty of fair representation); *Deboles v. Trans World Airlines*, 552 F.2d 1005, 1014, 1017-18 (3d Cir.), *cert. denied*, 434 U.S. 837 (1977) (union misstatements concerning its efforts to secure certain seniority rights breached duty of fair representation); *Retana v. Apartment, Motel, Hotel & Elevator Operators Union*, 453 F.2d 1018, 1023-25 (9th Cir. 1972) (allegations of failure of union to provide copy of collective-bargaining agreement in Spanish and failure to explain members' rights in Spanish, when substantial number of members spoke only Spanish, state claim for breach of duty of fair representation). Count II of Gainey's complaint, therefore, may well state a claim for relief for breach of the duty of fair representation. If it were so characterized, then Counts I and II would be hybrid § 301/unfair-representation claims and barred under the applicable six-month

statute of limitation. *See Del Costello, supra.* The conspiracy count would also be governed by the same six-month statute of limitation, *see Muldoon v. Service Employees International Union, Local 252,* 609 F.Supp. 842, 845-46 (E.D.Pa. 1985); *Creamer v. General Teamsters Local Union 326,* 579 F.Supp. 1288 (D.Del. 1984), and would be time-barred.

Gainey's characterization of Count II of the complaint as a state law claim rather than a breach of fair representation claim is of no avail. A state law claim for intentional failure to reveal terms of the collective-bargaining agreement prior to ratification, if such a claim exists, would be preempted. *See Farmer v. United Brotherhood of Carpenters and Joiners of America, Local 25,* 430 U.S. 290, 97 S.Ct. 1056, 51 L.Ed.2d 338 (1977); *Dazzo v. Local 259, United Automobile Aerospace and Agricultural Implement Workers of America,* 448 F.Supp. 799, 801-02 (D.N.Y. 1978). The remaining counts of the complaint would still be governed by the six-month statute of limitation of § 160(b), *see Fiske v. Lockheed-Georgia Co.,* 568 F.Supp. 590, 595 (N.D.Ga. 1983); *Muldoon, supra,* and would have to be dismissed as time-barred.

Based on the foregoing discussion, regardless of how the three counts of the complaint are characterized, each count must be dismissed, either as barred by the statute of limitations or as preempted. It is not necessary, therefore, to address the Union's argument that the complaint must be dismissed as to it for failure to exhaust contractual remedies. As for Gilman's requests for costs, it seems to this Court that, if counsel for plaintiff had made reasonable inquiry into the law, he would have known that dismissal of this action was inevitable. The brief

filed by plaintiff's counsel in opposition to the motions of the defendants cites no cases dealing with the statute of limitations or reemption issues and makes no argument for a change in existing law. Nevertheless, the Court deems the best course to be to afford plaintiff's counsel the opportunity to show cause in writing why sanctions should not be imposed against him under Rule 11 of the Federal Rules of Civil Procedure.

Accordingly, the motions of both defendants to dismiss the complaint are GRANTED and the action is hereby *dismissed with prejudice*. The Clerk of Court is directed to enter an appropriate judgment of dismissal.

IT IS FURTHER ORDERED that counsel for the plaintiff shall show cause, in writing, within fourteen (14) days of the date of entry of this Order, why sanctions should not be imposed against him under Fed.R.Civ.P. 11.

SO ORDERED, this 7th day of July, 1986.

/s/ Anthony A. Alaimo
CHIEF JUDGE,
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 86-8602

Non-Argument Calendar
D.C. Docket No. 286-63

WILLIAM C. GAINEY,

Plaintiff-Appellant,

versus

GILMAN PAPER COMPANY and UNITED PAPER-WORKERS INTERNATIONAL UNION,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Georgia

Before GODBOLD, VANCE and JOHNSON,
Circuit Judges

J U D G M E N T

(Filed July 17, 1987)

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Georgia, and was taken under submission by the Court upon the record and briefs on file, pursuant to Circuit Rule 23;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby, AFFIRMED;

It is further ordered that plaintiff-appellant pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

Entered: May 14, 1978
For the Court: Miguel J. Cortez, Clerk

By: /s/ David Maland
Deputy Clerk

ISSUED AS MANDATE: JULY 16, 1987